

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ROSEANNE DIMENCO, TYRONE
DICKENS, RICHARD MARLOWE, JUAN
ANTONIO MOLINA, NICHOLAS
PALAFOX, TONI RANGEL, STARLA
ROLLINS, MYKELE SAUNDERS, and
MARTHA VAZQUEZ,

Plaintiffs,

vs.

SERVICE EMPLOYEES INTERNATIONAL
UNION, DAVID REGAN, and ELISEO
MEDINA,

Defendants.

Case No: C 10-03112 SBA

ORDER DISMISSING ACTION

Dkt. 52

On April 29, 2011, the Court issued an Order to Show Cause (OSC) directing Plaintiffs to show cause why the instant action should not be dismissed under Federal Rule of Civil Procedure 41(b). The OSC was based, inter alia, on Plaintiffs' failure to comply with the Court's January 10, 2011, disqualifying their counsel and directing Plaintiffs to retain new counsel within thirty days. Dkt. 50. In addition, Plaintiffs failed to file a Case Management Conference Statement in anticipation of the Case Management Conference scheduled for April 28, 2011. Id. Plaintiffs had until May 6, 2011, to respond to the OSC, and were explicitly warned that the "FAILURE TO FULLY COMPLY WITH THIS ORDER WILL BE DEEMED SUFFICIENT GROUNDS TO DISMISS THE ACTION,

1 WITHOUT FURTHER NOTICE.” Dkt. 52 at 2. Plaintiffs have failed to respond to the
2 OSC.

3 “Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an
4 action for failure to comply with any order of the court.” Ferdik v. Bonzelet 963 F.2d
5 1258, 1260 (9th Cir. 1992). “In determining whether to dismiss a claim for failure to
6 prosecute or failure to comply with a court order, the Court must weigh the following
7 factors: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need
8 to manage its docket; (3) the risk of prejudice to defendants/respondents; (4) the availability
9 of less drastic alternatives; and (5) the public policy favoring disposition of cases on their
10 merits.” Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002).

11 In the instant case, the Court finds that the above-referenced factors weigh in favor
12 of dismissal. With regard to the first factor, “[t]he public’s interest in expeditious
13 resolution of litigation always favors dismissal.” Yourish v. Cal. Amplifier, 191 F.3d 983,
14 990 (9th Cir. 1999). This is particularly true in the instant case, where Plaintiffs have failed
15 to prosecute this action by failing to comply with the Court’s orders to retain new counsel
16 and to prepare and file a Case Management Statement.

17 The second factor also militates in favor of dismissal. See Pagtalunan, 291 F.3d at
18 642 (“It is incumbent upon the Court to manage its docket without being subject to routine
19 noncompliance of litigants”); Yourish, 191 F.3d 983, 990 (9th Cir. 1999) (recognizing
20 court’s need to control its own docket); see also Ferdik, 963 F.2d at 1261 (non-compliance
21 with a court’s order diverts “valuable time that [the court] could have devoted to other
22 major and serious criminal and civil cases on its docket.”).

23 The third factor, the risk of prejudice to the defendants, generally requires that “a
24 defendant ... establish that plaintiff’s actions impaired defendant’s ability to proceed to trial
25 or threatened to interfere with the rightful decision of the case.” Pagtalunan, 291 F.3d at,
26 642. At the same time, the Ninth Circuit has “related the risk of prejudice to the plaintiff’s
27 reason for defaulting.” Id. Here, Plaintiffs have offered no explanation for their failure to
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1 respond nor is any apparent from the record. These facts also weigh strongly in favor of
2 dismissal. See Yourish, 191 F.3d at 991; Ghazali, 46 F.3d. at 54.

3 As to the fourth factor, the Court has already considered less drastic alternatives to
4 dismissal. The Court explicitly warned Plaintiffs that the failure to respond to the OSC
5 would result in the dismissal of the action. “[A] district court’s warning to a party that
6 failure to obey the court’s order will result in dismissal can satisfy the ‘consideration of
7 [less drastic sanctions]’ requirement.” Ferdik, 963 F.2d at 1262.

8 The final factor, which favors disposition of cases on the merits, by definition,
9 weighs against dismissal. Pagtalunan, 291 F.3d at 643 (“Public policy favors disposition of
10 cases on the merits. Thus, this factor weighs against dismissal.”).

11 In sum, the Court concludes that four of the five relevant factors weigh strongly in
12 favor of dismissing the action in its entirety. Id. (affirming dismissal where three factors
13 favored dismissal, while two factors weighed against dismissal). Accordingly,

14 IT IS HEREBY ORDERED THAT the instant action is DISMISSED with prejudice.
15 The Clerk shall close the file and terminate all pending matters and deadlines.

16 IT IS SO ORDERED.

17 Dated: May 10, 2011


SAUNDRA BROWN ARMSTRONG
United States District Judge